IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.1078 OF 2005

WITH

CIVIL APPLICATION NO.1317 OF 2005

Mohamed Salim Sabir ..Appellant.

Vs.

Bhagwandas Godumal Nagdevani ..Respondent.

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Mr.Suresh Gole with Mr. I.S.Yadav for the Appellant.

Mr.S.M.Shukla for the Respondent.

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CORAM : DR.D.Y.CHANDRACHUD, J.

5th December, 2005.

P.C. :

1. Admit. Counsel appearing on behalf of the Respondent waives service. By consent taken up for hearing and final disposal.

2. The Respondent is the original Plaintiff in

a suit instituted before the City Civil Court (S.C.Suit No.4717 of 2005). The relief which has been sought in the plaint is an order of injunction restraining the Appellant from encroaching upon or trespassing into the premises of a shop which forms the subject matter of the suit and from illegally dispossessing the Respondent without due process of law. The Trial Judge appointed a Court Commissioner at the interim stage and the report of the Commissioner is annexed to the paperbook. The Commissioner found when he entered into the suit premises that the Appellant who is the original Defendant, was in possession of the suit premises. There is a reference in the report of the Commissioner to various moveable articles including articles of furniture. It is the case of the Appellant that even the telephones are in the personal name of the Appellant. According to the Respondent, the shops and establishment licence and the electricity bills as well as the rent receipts stand in the name of his client and that there is absolutely no evidence, save and except for the report of the Commissioner to show that the Appellant is in possession. Moreover, it was submitted that the agreement with the Appellant is

in respect of Shop No.4 and not in respect of Shop No.14 which forms the subject matter of the dispute in the present case. According to the Respondent, the Appellant was not in settled possession of the premises and that taking advantage of the fact that the Respondent has been arrested on 21st October, 2005, the date on which the suit was instituted, the Appellant had encroached upon the premises. Hence, it was submitted that the Appellant cannot be protected by an order of injunction. The Learned Trial Judge has by his order directed that the Court Commissioner should seal the premises and put his lock over the premises. Both the learned counsel are agreed in stating before the Court that the sealing of the premises at this stage would not serve the purpose of either of the parties and it would be appropriate if, having regard to the rival contentions of the parties, an appropriate order is passed by the Learned Trial Judge. I am of the view that there is some merit in the submission which has been urged before the Court. The question as to whether the Appellant has any claim in support of his submission that he has been in settled possession should be reconsidered by the Trial Court. Similarly, it would be open to the

Respondent to urge as he has urged in these proceedings that all the documents in respect of the premises are in the name of the Respondent and it is the Respondent who has been in settled possession. In order to facilitate a fresh determination by the Learned Trial Judge, the impugned order shall be regarded as an ad interim order in the Notice of Motion and the Motion shall be heard and finally disposed of by the Learned Trial Judge afresh after hearing the parties. The Appeal is accordingly disposed of. There shall be no order as to costs.

In view of the disposal of the Appeal from Order, the Civil Application is rendered infructuous and is accordingly disposed of.